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**FISCAL IMPACT STATEMENT**

**LS 6842**

**BILL NUMBER: SB 318**

**NOTE PREPARED: Jan 1, 2013**

**BILL AMENDED:**

**SUBJECT:** Home Rule Powers of Certain Units.

**FIRST AUTHOR:** Sen. Delph

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill gives Indianapolis-Marion County and second class cities (covered units) additional home rule powers.

It provides that a covered unit may reject statutory restrictions otherwise applicable to the covered unit and adopt ordinances for governance instead of the rejected statutes. It also provides that certain statutes may not be rejected by a covered unit.

The bill allows a covered unit to file for bankruptcy under federal law.

**Effective Date:** July 1, 2013.

**Explanation of State Expenditures:** *General Assembly:* Under current law, a local public question may not be placed on a ballot unless the local unit is expressly authorized to do so by statute. Under the bill, the number of bills submitted to the General Assembly potentially could be reduced if Indianapolis and second class cities (covered units) are able to place issues on the ballot without statutory authority. The actual reduction is indeterminate and is expected to be minimal. [In the 2012 legislative session, there were four bills that concerned Indianapolis. Of these bills, at least three had subjects that concerned other governmental units within Indianapolis, suggesting that the bills may still have gone forward. For the 35 bills filed in 2012 that concerned local government, there are no criteria available to determine whether the bills would have been filed if covered units have supplemental home rule authority.]

*Bankruptcy:* Under the bill, a covered unit could file for, conduct, and carryout a bankruptcy under Chapter

9 of the federal bankruptcy code. If a bankruptcy were to occur, state expenses could increase for borrowings, legal costs, additional financial oversight, or if the state must undertake any functions of the bankrupt municipality. (See *Explanation of Local Expenditures* for background information on municipal bankruptcy.)

*Department of Local Government Finance:* The Department of Local Government Finance (DLGF) will continue to oversee the permissible tax levies, tax rates, and budgets by adjusting the maximum levy to account for the covered unit's exercise of powers under home rule. This is expected to have no increased expenditure.

*Department of Revenue:* The bill does not allow a covered unit to reject statutes concerning the assessment of real and personal property, the imposition and collection of income, real, and personal property taxes, and tax appeals. The cost of collecting taxes, including creating forms, auditing for proper payment, and hearing appeals of the tax if a covered unit elects to impose a new tax, could increase for the Department of Revenue. If a covered unit adopts a tax not currently collected through a state mechanism, the state may have to provide for the assessment and collection of the tax. The bill does not provide authority for the Department of Revenue to receive reimbursement for additional tax collection costs.

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Summary:* If a covered unit is able to reject a responsibility assigned by statute or perform the responsibility in a more efficient manner, cost savings for the covered unit could be realized. The amount of such cost savings are indeterminate and would depend on the covered unit identifying responsibilities that result in more efficient operations of the unit.

*Tax Collection:* If a covered unit adopts a tax not currently collected through a local mechanism, the unit may have to provide for the assessment and collection of the tax.

*Bankruptcy:* If a covered unit enters into Chapter 9 bankruptcy proceedings, the unit could incur consulting and legal fees, as well as increased staff time to provide technical and legal documents needed. Additionally, access to credit and favorable interest rates may be limited, adding to the costs of borrowing for a unit seeking bankruptcy protection. A bankruptcy for a municipality does not necessarily cancel outstanding debt (as with other types of bankruptcy) and state law cannot be suspended by the bankruptcy court. The benefit of bankruptcy, such as restructuring debt so as to not increase taxes or decrease services, may offset some of these costs.

### **Background and Additional Information:**

*Authority to Reject:* Under current law, there are 12 restrictions on a unit's authority. The bill would remove two of these restriction, the authority to impose a tax and to invest funds, for Indianapolis-Marion County and other second class cities in the state. Additionally, the bill provides that 28 statutory provision may not be rejected by a covered unit. Among others, these statutes include rules concerning courts; limits on indebtedness; election and candidate qualifications; codification and enforcement of ordinances; issuance of debt, establishment, licensing, and administration of hospitals and health care facilities; land use and planning; local government reorganization, annexation, and eminent domain; open meetings and records retention; accounting for public funds; public safety communications; county homes; powers and duties of city and county officials and removal from office; fire and building safety; public employee pensions; and public works and public purchasing.

*Bankruptcy:* Municipalities, as public corporations, have the ability to file for bankruptcy protection under federal law if they meet certain criteria. Among these criteria is that the municipality have specific authority to file for bankruptcy in state law. Indiana is among 21 states that do not address Chapter 9 filings in their statutes. There are 13 states that provide specific authority in their statutes, 2 that have specific authority for specific types of municipal units, and 13 have conditional authority for municipalities to file bankruptcy.

Municipal bankruptcy is rare. Since 1937 when Chapter 9 was established, there have been fewer than 500 municipal bankruptcy petitions filed. In the 12-month period ended September 2011, there were 8 cases commenced.

Chapter 9 bankruptcy law does not provide for the liquidation of municipal assets, as such action is considered to violate the 10<sup>th</sup> Amendment of the Constitution, which gives the states sovereignty over their own affairs. As a result of application of the 10<sup>th</sup> Amendment, the bankruptcy court generally is not active in managing a municipal bankruptcy case, and generally is limited to approving the petition, confirming a plan of debt adjustment, and ensuring implementation of the plan. A municipality may consent to have the court exercise jurisdiction.

**Explanation of Local Revenues:** Under the bill, a covered unit could impose a tax and invest money in ways not currently authorized in statute, which could result in additional revenue for the covered unit. The amount of additional revenue is indeterminate and will be based the type of tax imposed or investment undertaken, the tax base within the covered unit, and the ability of the covered unit to collect the tax.

*Property Tax:* Under the bill, these covered units could impose a special assessment, income tax, or property tax. The property tax could not exceed the maximum levy limits set in statute under IC 6-1.1-18.5, but the maximum levy limit could be adjusted by the DLGF to account for a covered unit's exercise of power under the bill.

**Background and Additional Information:**

*Covered Units:* Indianapolis-Marion County is considered a first class city based on population under state law. State law identifies second class cities as those having a population over 35,000 and under 599,999. The following 23 cities are covered units under the bill.

City	2010 Population	City	2010 Population	City	2010 Population
Indianapolis	820,445	Muncie	70,085	Lawrence	46,001
Fort Wayne	253,691	Lafayette	67,140	Kokomo	45,468
Evansville	117,429	Terre Haute	60,785	Jeffersonville	44,953
South Bend	101,168	Anderson	56,129	Columbus	44,061
Hammond	80,830	Noblesville	51,969	Portage	36,828
Bloomington	80,405	Elkhart	50,949	Richmond	36,812
Gary	80,294	Greenwood	49,791	New Albany	36,372
Carmel	79,191	Mishawaka	48,252		

**State Agencies Affected:** General Assembly; DLGF.

**Local Agencies Affected:** Indianapolis-Marion County; second class cities.

**Information Sources:** [www.ltfp.gfoa.org/index.php?view=article&id=94&option=com;](http://www.ltfp.gfoa.org/index.php?view=article&id=94&option=com;www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter9.aspx)  
[www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter9.aspx](http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter9.aspx);  
<http://lawreview.law.lsu.edu/issues/articles/the-next-financial-hurricane-rethinking-municipal-bankruptcy-in-louisiana/>;  
 Judicial Business 2011 accessed at <http://www.uscourts.gov/Statistics.aspx>;  
 National Association of State Budget Officers, *Municipal Bankruptcy & the Role of the States*;  
 National Association of State Auditor, Comptrollers, and Treasurers, *Facts You Should Know: State and Local Bankruptcy, Municipal Bonds, and State and Local Pensions*, Michael P. Taylor, Columbia Management, *State Oversight a Key Factor in Assessing Local Municipality Credit Quality*, January 2012.

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